

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

In re: CHAPTER 7
Case No.

JERRY L. TOWNSEND
Debtor

L-92-00599-C

WELLMAN FARM CENTER, INC.,
Plaintiff

v.

JERRY L. TOWNSEND,
Defendant

Adversary Proceeding No.
L-92-0107-C

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

AUG - 3 1993

BARBARA A. EVERLY, CLERK

JUDGMENT

The issues of this proceeding having been duly considered by the Honorable Paul J. Kilburg, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: A Nondischargeable judgment is entered for Wellman Farm Center, Inc. and against Jerry L. Townsend in the amount of \$7,500.00, pursuant to the settlement agreement between the parties, which shall not accrue interest.

BARBARA A. EVERLY
Clerk of Bankruptcy Court

By: *William A. Goley*
Deputy Clerk

[Seal of the U.S. Bankruptcy Court]
Date of Issuance: August 3, 1993

Copy to: William Shafer, Harry Terpstra
Charles Meardon and U.S. Trustee 8/3/93 mg

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MAY 28 1993

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
BARBARA A. EVERLY, CLERK

IN RE: :
JERRY L. TOWNSEND, Debtor. : CASE NO. L-92-00599-C
:
WELLMAN FARM CENTER, INC., : CHAPTER 7
Plaintiff, :
v. :
JERRY L. TOWNSEND, :
Defendant. :

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Plaintiff and Defendant, by and through counsel, in support of their Motion for Approval of Settlement Agreement, state:

1. Plaintiff (WFC) initiated this adversary Complaint alleging willful and malicious injury to WFC's property by defendant, in violation of 11 U.S.C. 523(a)(6). The parties have conducted discovery and have assessed the relative strengths and weaknesses of each party's position. As a result, the parties wish to stipulate to the following:

- A. Upon approval of this agreement by the court, the parties agree that Townsend owes WFC \$7,500.00, and Townsend consents to the entry of a nondischargeable judgment in the amount of \$7,500.00 upon approval of this agreement.

- (1) Townsend may reduce the above obligation to WFC by \$2,000.00 if Townsend causes to be conveyed to WFC the following described real estate in Washington County:

Lot 3, Southeast Quarter of the Northwest Quarter, except the West 750 feet thereof, containing 3 acres more or less, in Section 24, Township 77 North, Range 9 West of the 5th P.M. Also the abandoned railroad right-of-way of the former Central Iowa Railway and Development Co. being 100 feet in width and adjoining the above tract, and running Northeasterly to the Southwest boundary line of the following described right-of-way tract:

Commencing at the intersection of the West side of 9th Street and the North boundary line of the abandoned railroad right-of-way, thence Southwesterly along the North boundary line of said right-of-way 520 feet, thence Southeasterly 100 feet to the South boundary line of said right-of-way, thence Northeasterly 460 feet along the South boundary line of said right-of-way to the West side 9th Street, thence North 115 feet to point of beginning.

Said land is currently titled to Nicole and Joseph Townsend, the son and daughter of defendant Townsend. Townsend shall pay all costs associated with the transfer of said

land to WFC. The transfer shall comply with all applicable Iowa title standards and laws.

- B. Townsend may perform labor for WFC and reduce the \$7,500.00 by \$10.00 per labor hour worked. If Townsend performs labor to reduce his debt to WFC, Townsend shall perform 750 hours of labor over the next five (5) calendar years commencing July 1, 1993.

Concerning this labor arrangement:

- (1) Townsend shall perform a minimum of 100 labor hours in each calendar year until Townsend's obligation to WFC is satisfied. WFC shall maintain a record of labor hours performed by Townsend and provide a copy thereof to Townsend quarterly. Said record shall be conclusive with respect to labor hours performed by Townsend unless, within ten (10) days after receipt of said record, Townsend presents a written objection thereto to WFC at WFC's office in Wellman, Iowa.
- (2) Townsend acknowledges that he (Townsend) is an independent contractor. Accordingly,

Townsend acknowledges that WFC will not provide worker's compensation coverage for Townsend.

- (3) Since Townsend is an independent contractor while performing labor for WFC, Townsend acknowledges that WFC will neither withhold money for Townsend nor pay on his behalf any taxes, withholdings or insurance, including but not limited to any of the following:

- (a) F.I.C.A.
- (b) United States income tax
- (c) State of Iowa income tax
- (d) Unemployment compensation
- (e) Any health or disability insurance

- (4) Townsend may reduce the number of labor hours to be performed by tendering to WFC, in cash, \$10.00 per labor hour Townsend wishes not to perform.

- (5) Townsend is responsible for all income tax consequences of this settlement.

C. WFC shall not execute or in any way enforce its nondischargeable judgment until Townsend fails to work a minimum of 100 hours in a calendar year or


reimburse WFC pursuant to paragraph 1(B) while Townsend's obligation to WFC exceeds \$1000.00 after giving Townsend credit for labor hours performed.

- D. If and when Townsend pays WFC \$7,500.00, whether in the form of the land described above, cash or through performing labor, WFC shall release or otherwise provide satisfaction of the \$7,500.00 nondischargeable judgment.
- E. If Townsend fails to perform at least 100 hours of labor in a calendar year while his obligation to WFC exceeds \$1000.00, WFC is entitled to pursue any and all collection remedies available to collect the outstanding balance of Townsend's debt to WFC.
- F. Plaintiffs' complaint is therefore granted in part and denied in part.

The parties believe that this settlement affects the parties to this adversary complaint only since this complaint was filed solely as an objection to the discharge of plaintiff's particular debt under §523. Accordingly, the parties believe that no further notice is necessary before this court enters an order approving this stipulation.

The approval of this stipulation by the court will obviate the need for any trial or further hearing on this adversarial complaint, and the complaint can then be closed.

WHEREFORE, plaintiff respectfully requests that this court enter and enroll an order approving this motion, and for such further relief as may be appropriate in the premises.


Jerry L. Townsend

STATE OF IOWA:

SS
COUNTY OF Iowa:

On this 25th day of May, 1993, before me, the undersigned, a Notary Public in and for State of Iowa, personally appeared Jerry L. Townsend, to me known to be the identical person named in and who executed the above and foregoing Motion for Approval of Settlement Agreement, and acknowledged that he executed the same as his voluntary act and deed.




NOTARY PUBLIC, STATE OF IOWA.

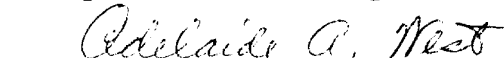
WELLMAN FARM CENTER, INC.

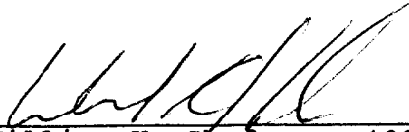

David J. Ockenfels, President

STATE OF IOWA:

SS
COUNTY OF Johnson:

On this 27th day of May, 1993, before me, the undersigned, a Notary Public in and for State of Iowa, personally appeared David J. Ockenfels, to me personally known, who being by me duly sworn, did say that he is the President of Wellman Farm Center, Inc.; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said David Ockenfels as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.


NOTARY PUBLIC, STATE OF IOWA.

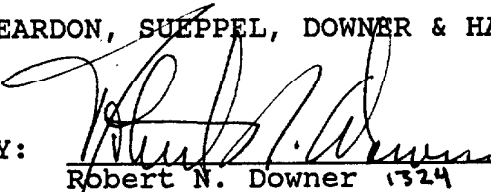


William K. Shafer 13236
SHAFFER LAW OFFICES
204 West State Street
P. O. Box 779
Williamsburg, IA 52361

ATTORNEY FOR DEFENDANT.


MEARDON, SUEPPEL, DOWNER & HAYES P.L.C.

BY:



Robert N. Downer 1324

BY:



Charles A. Meardon 1771
122 South Linn Street
Iowa City, IA 52240
PHONE: 319/338-9222
ATTORNEYS FOR PLAINTIFF.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the

28th day of May 1993
Iowa City

Copy to:

William K. Shafer
SHAFER LAW OFFICES
204 West State Street.
P. O. Box 779
Williamsburg, IA 52361

Wesley B. Huisinga
U. S. TRUSTEE
675, The Center
425 - 2nd St. SE, P. O. Box 47
Cedar Rapids, IA 52406

Harry Terpstra
TERPSTRA, TERPSTRA & EPPING
830 Higley Building
Cedar Rapids, IA 52401

Joel Hjelmaas
MORAIN, BURLINGAME, PUGH, JUHL & PEYTON
5400 University Avenue
West Des Moines, IA 50265

Eric W. Lam
MOYER & BERGMAN
2720 - 1ST Ave. NE
P. O. Box 1943
Cedar Rapids, IA 52406-1943

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

AUG 02 1993

IN RE: : BARBARA A. EVERLY, CLERK
JERRY L. TOWNSEND, Debtor. : CASE NO. L-92-00599-C
:
WELLMAN FARM CENTER, INC., : CHAPTER 7
Plaintiff, : ADV. PROC. NO. L-92-0107-C
v. :
JERRY L. TOWNSEND, :
Defendant. :

ORDER APPROVING SETTLEMENT

The above-captioned case comes before the Court on the joint Motion for Approval of Settlement Agreement. After reviewing the Motion and being fully advised in the premises, the Court enters the following order:

1. This case involves an objection to the discharge of defendant's individual debt to plaintiff pursuant to 11 U.S.C. §523(a)(6). The Court has jurisdiction over the parties and subject matter of this dispute.

2. On or about May 28, 1993 plaintiff and defendant filed the pending joint Motion for Approval of Settlement Agreement. However, since this case initially involved a §727 objection, by Court order dated May 24, 1993, plaintiff was directed to serve the United States and case trustees with a notice of "dismissal" of the §727 objection. The Court file reflects that on or about June 3,

plaintiff served the trustees with a Notice of Amendment and Dismissal, and no objection thereto was raised within the time limit set forth in the Court's May 24, 1993 order.

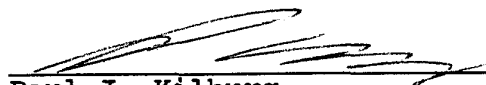
3. It appears that plaintiff and defendant have complied with all Court orders and applicable Bankruptcy and Local Rules, and the Motion for Approval of Settlement Agreement is properly before the Court. After reviewing the file, the proposed settlement and being fully advised in the premises, the Court concludes that the Motion for Approval of Settlement Agreement should be and is hereby approved in its entirety.

IT IS THEREFORE ORDERED that a nondischargeable judgment shall enter against Jerry L. Townsend in the amount of \$7,500.00, pursuant to the settlement agreement between the parties, which shall not accrue interest.

IT IS FURTHER ORDERED that the Motion for Approval of Settlement Agreement is hereby granted, and the Settlement Agreement between the parties is accepted and ratified by the Court.

IT IS FURTHER ORDERED that the above-captioned case is hereby resolved as set forth in the Motion for Approval of Settlement Agreement without the necessity of further notice or hearing.

SO ORDERED on this 30 day of July, 1993.


Paul J. Kilburg
Judge, U. S. Bankruptcy Court

Copy to:

William K. Shafer
SHAFFER LAW OFFICES
204 West State Street.
P. O. Box 779
Williamsburg, IA 52361

Wesley B. Huisinga
U. S. TRUSTEE
675, The Center
425 - 2nd St. SE, P. O. Box 47
Cedar Rapids, IA 52406

Harry Terpstra
TERPSTRA, TERPSTRA & EPPING
830 Higley Building
Cedar Rapids, IA 52401

Charles A. Meardon
MEARDON, SUEPPEL, DOWNER & HAYES
122 South Linn Street
Iowa City, IA 52240

This 8-2-93
Michael A. Solari
Deputy Clerk, Bankruptcy Court
PO Box 74890
Cedar Rapids, IA 52407

Prepared by: Charles A. Meardon, -#000009771
Meardon, Sueppel, Downer & Hayes, P.L.C.
122 South Linn St.
Iowa City, Iowa 52240
Attorneys for Plaintiff Wellman Farm Center